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SUMMARY RECORD OF THE 195th MEETING

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on Thursday, 10 November 1994, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Monaco (CAT/C/21/Add.1)

1. At the invitation of the Chairman, Mr. Serdet (Monaco) took a place at the Committee table.

2. Mr. SERDET said that the Constitution of Monaco affirmed its commitment to the values upheld by the Convention. Thus, article 20, paragraph 1, of the Constitution provided that no penalty might be introduced or applied except by law; article 20, paragraph 2, provided that criminal law must ensure respect for human personality and dignity, and also that no one might be subjected to cruel, inhuman or degrading treatment. Those fundamental principles, which were in line with those enshrined in the Convention, were implemented in the Penal Code and the Code of Penal Procedure. Severe penalties were prescribed for acts contravening those principles.

3. Monaco's penal procedure ensured that the rights of the defence were strictly respected. If a public official was found guilty of an infringement of the principles he had referred to, that official would be prosecuted and tried under the ordinary law before the ordinary courts. Any person who considered he had been the victim of an abuse of authority could, and indeed should, make a complaint to the judicial authorities, and an investigation into the complaint would be opened immediately. The investigation would be an honest endeavour to establish the truth of the matter, and would conceal nothing. The penalties handed down for such offences were fines or imprisonment: physical punishment, or any form of cruel, inhuman or degrading treatment, were excluded.

4. The Convention prescribed that the victim of an act of torture should be entitled to receive compensation. The ordinary law of Monaco already provided for such compensation, by giving a victim of torture the right to claim damages against the perpetrator. No difficulty arose in regard to the recognition of torture as an extraditable offence: the Principality had already made drug trafficking extraditable, and it would apply the same procedure if a case of torture should occur.

5. Monaco's legislation was already in line with the requirements of the Convention, and thus needed no adjustment. It had always been inspired by a respect for human rights and fundamental freedoms, and by an abhorrence of acts of torture or other cruel, inhuman or degrading treatment or punishment.

6. Mr. EL IBRASHI, Country Rapporteur, welcomed the interest shown by Monaco in abiding by the provisions of the Convention, both in the letter and in the spirit. He was also glad to note that the Constitution of Monaco affirmed its commitment to the values upheld by the Convention. Paragraph 10 of the report stated that implementation of the Convention's precepts posed no particular difficulties in the Principality, and indeed the Committee had received no complaints of torture from Monaco, indicating that the situation there was a positive one.

7. He had only a few minor points to raise. The representative of Monaco had stated that there was no need for any changes in the Constitution or in the Penal Code. He would like to know whether Monaco had adopted any measures to ensure the practical application of each of the articles of the Convention, or whether it was deemed sufficient that the Constitution and Penal Code reflected the Convention's spirit and values. Most constitutions stated specifically that, once a State became party to a convention, that convention's provisions had the same force as internal legislation.

8. Paragraph 7 of the report stated that the Monegasque legal system provided for compensation through a claim for damages against the perpetrator of the offence. He wondered whether that meant that the victim had to wait until a court had found the perpetrator guilty of the offence before he could make his or her claim.

9. In connection with article 3 of the Convention, he would like to know whether there were any provisions in Monegasque domestic law expressly prohibiting the expulsion, return, refoulement or extradition of a person to a State where there were substantial grounds for believing that the person concerned was in danger of being subjected to torture. The Committee would also be interested in hearing how the police and law enforcement officials were made aware of their obligations under the Convention, and whether they received any special training or instruction for that purpose.

10. Mrs. ILIOPOULOS STRANGAS, having welcomed the representative of a country in which no cases of torture had ever been reported, said that, as she understood it, the Constitution had the force of law in Monaco. She wondered what would happen if the Penal Code, or the Code of Penal Procedure, were changed in such a way as to make them incompatible with the Convention. She also asked whether the Constitution guaranteed than no one could be brought to court unless charged with an indictable offence; whether Monaco's penal procedure provides for a detainee's right to make immediate contact with his or her lawyer, family, and a doctor of his or her choice and whether Monaco had made the declarations under articles 21 and 22 of the Convention, recognizing the competence of the Committee to receive and consider communications?

11. It would be useful to know how many prisons there were in Monaco, how many prisoners, and whether there had been any cases involving the extradition of foreigners which might come within the scope of article 3 of the Convention.

12. Mr. BURNS said it was not clear whether Monaco had adopted a monistic or a dualistic approach to international conventions and whether specific legislative action had to be taken before all of the provisions of the Convention could become incorporated into domestic law. If that were so, he asked whether such action had, in fact, been taken.

13. The reference to compensation in paragraph 7 of the report did not seem to him sufficient to deal with the question of State responsibility. He wished to know whether the State was, vicariously or otherwise, liable for the illegal conduct of an official who abused his powers, since the official concerned might well not be in a position to compensate the victim adequately.

14. He would like further information on the legal regime governing powers of arrest, and on the rules governing detention - particularly the maximum period for which a person could be detained before being brought before a judge, and whether there was any circumstance in which a person could be held incommunicado, either upon arrest or subsequent to arrest. If the police was Monaco's only enforcement agency, he asked the representative to give a brief description of how the police force was structured, with particular reference to whether the police had a security arm, and if so, whether that arm had any special powers.

15. Mr. SORENSEN said the questions he wished to ask had already been raised. He would merely draw the delegations attention to the existence of United Nations Voluntary Fund for Victims of Torture, and suggest that Monaco might wish to make a donation to it. Such a gesture would be valuable in moral as well as monetary terms, since it was encouraging for victims to know that a wide range of countries had shown them respect by supporting the Fund.

16. Mr. GIL LAVEDRA associated himself with the comments made by the Country Rapporteur. In his view, the report was somewhat too brief. Paragraph 2 stated that criminal legislation prohibited public officials from engaging in acts of torture. He would like to know what specific penalties were provided under the Penal Code for such conduct and whether there had been any allegations of abuses or ill-treatment by the police.

17. Like Mr. Burns, he too, would appreciate an explanation of how the police force was controlled and structured.

18. Mr. BEN AMMAR said he would like some information on the organization of the judiciary in Monaco and on its status, particularly the manner in which judges were appointed and promoted, and how - if the need arose - they were punished. He asked what penalty was imposed for the crime of torture and to what extent that penalty was made commensurate with the gravity of the offence.

19. Information would also be welcome on the regulations governing detention in custody, and as to whether Monaco intended to make the declarations provided for under articles 21 and 22 of the Convention.

20. The CHAIRMAN, speaking as a member of the Committee, said that the report of Monaco did not appear to have been drafted in accordance with the Committee's guidelines. The fact that no allegations of torture had been made was no reason why the report could not have included information on specific measures taken to implement the Convention, following the order of articles 1 to 16.

21. Since the representative was a member of the judiciary, he could, perhaps, inform the Committee whether any cases of ill-treatment by the police had occurred, or whether Monaco was indeed free of an evil that was frequently encountered elsewhere in the world.

22. Mr. Serdet (Monaco) withdrew.

The meeting was suspended at 10.30 a.m. and resumed at 10.40 a.m

Initial report of Liechtenstein (CAT/C/12/Add.4)

23. At the invitation of the Chairman, Mr. Holzknecht and Mrs. Willi (Liechtenstein) took places at the Committee table.

24. Mrs. WILLI (Liechtenstein) said it was her Government's hope that, despite the delay in its submission, Liechtenstein's report (CAT/C/12/Add.4) would contribute to the effectiveness of the human rights treaties reporting system, which was of crucial importance for the promotion and protection of human rights.

25. She wished to inform the Committee that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had visited Liechtenstein from 13 to 17 April 1993. The Committee's report, which had been published on 20 December 1993, contained a number of observations and recommendations, notably regarding the number of prison wardens needed to provide adequate care for prisoners at all times. Those observations and recommendations had been approved by her Government in October 1994.

26. She expressed her Government's appreciation of the work done by the Committee, and assured it of Liechtenstein's continued support.

27. Mr. EL IBRASHI (Country Rapporteur), having thanked the delegation of Liechtenstein for its country's initial report and its own introduction which reflected its Government's desire to comply with the provisions of the Convention against Torture, said he would like some clarification, first of all, on a general point, namely how judges in Liechtenstein were appointed and dismissed and how their role was linked to that of the public prosecutor.

28. He then asked a number of more specific questions. Paragraph 11 of the initial report stated that there was no definition of the term "torture" in either the Constitution of Liechtenstein or in the relevant legislative texts; he inquired, therefore, whether international instruments automatically became part of legislation in that country and what happened if such an instrument was found to be incompatible with domestic legislation. He would also like to know whether a judge could apply the articles of the Convention directly or whether parties to a case must first cite them, and whether Liechtenstein intended to introduce a definition of torture into its penal law.

29. In connection with paragraph 25, he requested information on the legal situation and rights of persons held in custody for 18 and for 40 days and the grounds for such detention.

30. According to paragraph 60, persons arrested unlawfully or when obviously innocent and those who were proved innocent after having been convicted were entitled to full compensation. He assumed that even persons found guilty were entitled to compensation if they had been tortured. He also asked whether any provision had been made to pay compensation for moral damages. Paragraph 65 said that victims of torture would, besides a financial compensation, be given

medical and psychological assistance, and he inquired whether victims of torture were entitled to such assistance by law or whether it was merely established practice.

31. Reference was made in paragraph 16 to "difficulties" in applying article 3 under Liechtenstein law. He asked what those difficulties were, what the bill on the granting of asylum contained, whether the Committee could have a copy of the bill and whether Liechtenstein had consulted the United Nations High Commissioner for Refugees for assistance in its drafting.

32. The Committee had learned from a news report that 18 Tibetan asylum-seekers who had entered Liechtenstein in October 1993 had been allowed to stay pending a ruling on whether they might be sent to other countries which already had large groups of Tibetan refugees. He would like to know how Liechtenstin had ensured that article 3 of the Convention was fully respected with regard to those asylum-seekers and whether a decision had been taken on their application for refugee status.

33. Mr. YAKOVLEV (Country Rapporteur) asked whether habeas corpus existed in Liechtenstein and, if so, how it worked, what the rights of detainees were and more specifically, whether detainees had the right to speak to a lawyer and to be informed of their rights, whether detainees were ever held incommunicado, whether the authorities were required by law to inform a detainee's relatives of his whereabouts, whether Liechtenstein's legislation on prisoners was in keeping with United Nations Standard Minimum Rules for the Treatment of Prisoners and whether there was a mechanism to hear detainees' complaints.

34. Mr. BURNS asked, first of all, what was meant by the phrase "provided it lends itself to that purpose" in paragraph 7.

35. Turning to paragraph 26, he said that he had been struck by the phrase that persons held in temporary custody were authorized to communicate with visiting persons "in a way and to an extent which do not have a negative impact on the ongoing inquiry". That suggested that the inquiry might be very lengthy and, if the police interpreted the visit of a lawyer as obstructive, as indeed such visits always were, that being the whole purpose of having a lawyer, then the lawyer would be unable to see his client. Most countries had limits on the length of time a person could be held effectively incommunicado and, if Liechtenstein had no formal limits, he would like to know whether one existed in administrative practice. More generally, he asked who appointed and dismissed judges and what powers the judges had.

36. Concerning the treaty concluded between Austria and Liechtenstein on the accommodation of prisoners, referred to in paragraph 9, he wondered which of the two countries would be responsible for compensating a victim of torture who had been placed in custody in Austria pursuant to an order issued by a Liechtenstein judge, how a private individual would proceed in such circumstances, which country could issue a writ of habeas corpus if evidence indicated that the person was detained illegally and whether a person was handed over to Austria after all appeals had been exhausted or earlier. He also asked what was meant by the word "delusions" in paragraph 48.

37. He did not understand the logical link between the statement in paragraph 61 ("This constitutional provision also applies, in practice, to personal freedom and physical integrity") and paragraph 60 and asked whether the Committee could be provided with the relevant provisions of the Constitution covering false arrest and physical and psychological damage resulting from misconduct on the part of officials.

38. Mr. BEN AMMAR, noting that five years had elapsed between the signing of the Convention and its ratification, asked whether the delay had been caused by the Government or by difficulties at the legislative level.

39. The reference in paragraph 56 to the responsibility of the Government for supervising the treatment of persons detained in custody and prisoners, made no mention of systematic supervision, as called for under article 11 of the Convention, and he therefore inquired who was responsible for such supervision at both the administrative and the judicial levels, how such supervision worked and whether non-governmental organizations could visit places of detention.

40. Mr. GIL LAVEDRA asked who decided whether the visits received by a person in custody took place "in a way and to an extent which do not have a negative impact on the ongoing inquiry" (para. 26). He also would like to know whether detainees could communicate freely with counsel, relatives and doctors and what limitations existed in that regard.

41. Given the seriousness of the crime, the penalties for torture discussed in paragraph 13 appeared to be too lenient. It would therefore be useful if the delegation of Liechtensein could inform the Committee about the penalties imposed for murder and rape so that it would be possible to compare them.

42. Mr. REGMI said that the report contained no information on the implementation of the Convention in practice. Turning more specifically to paragraph 53, he inquired what authority was competent to receive complaints regarding acts of torture.

43. Mr. SORENSEN asked about the rights of detainees in general, whether they could inform their next of kin of their detention, whether they could be seen by a lawyer of their choice and whether they were informed of their rights.

44. He drew the attention of the delegation of Liechtenstein to the United Nations Voluntary Fund for Victims of Torture, which was in grave need of financial assistance; as an affluent country, Liechtenstein might perhaps wish to make a contribution to the Fund.

The meeting rose at 11.20 a.m.